

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

RANDOLPH J. THURBER,

Plaintiff,

V.

**STATE OF NEBRASKA,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, TERESA TACK-
STOGDILL, and JONI GEBHARD,**

Defendants.

CASE NO. 4:06CV3174

**ORDER ON MOTION FOR
PERMISSION OF COURT TO FILE
AMENDED COMPLAINT**

This matter comes before the Court on Plaintiff's Motion for Permission of Court to File Amended Complaint (Filing No. 51). Pursuant to Rule 15(a)¹ of the Federal Rules of Civil Procedure, the motion is granted with respect to (a) paragraphs 1–14 of the proposed Third Amended Complaint (Filing No. 53), and (b) the inclusion of the three proposed attachments (Filing No. 53, Attachments 1–3). On or before December 12, 2006, the Plaintiff is ordered to file a pleading entitled Fourth Amended Complaint, the contents of which shall be consistent with this Order. According to Rule 15(a), the Defendants have ten days after service of the amended pleading to amend their Answer (Filing No. 45). The Defendants are granted leave to file, on or before December 19, 2006, a supplemental brief to modify their Motion to Dismiss (Filing No. 46).

¹The Defendants argue that the Plaintiff attempted to bring his current motion under Rule 15(d). I agree with the Defendants that Rule 15(d)—which allows amendments for transactions, occurrences, or events “that have happened since the date of the pleading sought to be supplemented,” Fed. R. Civ. Pro. 15(d)—is not the proper rule under which the Plaintiff should have filed his current motion. However, the Plaintiff did not specify under which rule he was bringing the motion (Filing No. 51, 1); his brief in support states the motion is brought “pursuant to Rule 15 of the Federal Rules of Civil Procedure,” (Filing No. 52, 1); and he cites text of both Rules in his brief, (Filing No. 52, 1–2). I do not believe that his motion should be denied under Rule 15(a), and consequently grant leave to amend pursuant to that rule.

IT IS ORDERED:

1. Plaintiff's Motion for Permission of Court to File Amended Complaint (Filing No. 51), is granted with respect to:
 - (a) paragraphs 1–14 of the proposed Third Amended Complaint (Filing No. 53); and
 - (b) the inclusion of the three proposed attachments (Filing No. 53, Attachments 1–3);
2. Plaintiff is ordered to file a pleading entitled Fourth Amended Complaint, consistent with this Order, on or before December 12, 2006; and
3. Defendants are granted leave to file, on or before December 19, 2006, a supplemental brief to modify their Motion to Dismiss (Filing No. 46).

DATED this 6th day of December, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge